MT LEGISLATIVE HISTORY

Chapter 530 1977

Bill (H) 461 S _____ Original bill & hist. ✓ C

H. Committee on Public Health Welfare & Safety

Hearing Date(s) February 08 ✓ C

February 15 ✓ C

_____ ___ C

_____ ___ C

Date Out _____ ___ C

S. Committee on Judiciary

Hearing Date(s) April 08 ✓ C

April 12 ✓ C

_____ ___ C

_____ ___ C

_____ ___ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

The Law Library has no minutes from the House Public Health Sub committee.

H BILL NO. 461

INTRODUCED BY Halvorson - Keyser

by request of the Board of Crime Control

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE DIVISION OF FORENSIC SCIENCE IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR ITS ADMINISTRATION, DUTIES, AND FUNCTIONS; PROVIDING FOR A LABORATORY OF CRIMINALISTICS; ALTERING THE DUTIES OF THE CORONER; AND REPEALING SECTIONS 16-3403, 16-3405, 16-3409, 95-801, 95-802, 95-810, AND 95-814, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act shall be known as the "Montana Forensic Science System Act".

Section 2. Purpose. The purpose of this act is to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

Section 3. Creation of division of forensic science -- head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title

is state medical examiner and who shall be appointed by the board of forensic science. He shall be a forensic pathologist qualified or certified by the American board of pathologists of the American medical association.

Section 4. Functions of the division. The functions of the division include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology.

Section 5. Authority to accept grants. The division of forensic science is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this act.

Section 6. Board of forensic science -- establishment-composition. (1) The board of forensic science is established within the department of justice.

(2) There shall be 15 board members appointed by the governor.

(3) The board shall be representative of state and local governments and law enforcement agencies and the medical profession. It shall include:

(a) an incumbent mayor recommended by the Montana league of cities and towns;

(b) an incumbent county commissioner recommended by the Montana association of counties;

(c) a prosecutor recommended by the Montana

association of county attorneys;

(d) the chairman of the peace officers' standards and training advisory council;

(e) an incumbent chief of police recommended by the Montana chiefs of police association;

(f) an incumbent sheriff recommended by the Montana sheriffs and police officers association;

(g) a deputy sheriff recommended by the Montana sheriffs and police officers association;

(h) a police officer recommended by the Montana police protective association;

(i) a member recommended by the chief of the Montana highway patrol;

(j) a member recommended by the director of the department of fish and game;

(k) a member recommended by the attorney general;

(l) a medical doctor;

(m) a medical pathologist;

(n) a member possessing a graduate degree in one of the forensic sciences; and

(o) a county coroner.

Section 7. Duties of board. The board of forensic science shall:

(1) establish a laboratory of criminalistics;

(2) provide procedures consistent with this act for

the employing of all necessary personnel; and

(3) establish policy and set all necessary procedures for the functioning of the division of forensic science.

Section 8. Rules authorized. The board of forensic science is authorized to adopt rules necessary to accomplish the purposes of this act.

Section 9. Termination of board. (1) All necessary functions of the board shall be completed within a 2-year period from the effective date of this act.

(2) Upon the termination of the 2-year period the board shall no longer exist.

Section 10. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this act;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing the director of the laboratory of criminalistics;

(6) appointing one or more associate medical examiners who serve at his pleasure; and

(7) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

Section 11. Associate medical examiners — qualifications — remuneration. (1) Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

(2) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(3) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

Section 12. Purpose and function of laboratory. (1) The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers, and all state agencies, and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory

director considers within the performance capability of the laboratory.

(3) The laboratory may charge reasonable fees for its services, except that it may not charge county, city, or municipal law enforcement officers or coroners for services rendered.

Section 13. Responsibilities of laboratory director. The laboratory director shall:

(1) be responsible to the state medical examiner for supervision and direction of the laboratory;

(2) appoint laboratory personnel rendering decisions as to the disposition of specimens; and

(3) perform all other duties required by the rules of the division.

Section 14. Removal of state medical examiner and laboratory director. The state medical examiner and the laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing on verified charges filed at least 20 days before the hearing and served at least 20 days before the hearing.

Section 15. Procedures upon suspicious deaths. (1) The coroner shall make or have performed any investigation he considers necessary whenever a death occurs or a body is found in his county and the death occurred under any of the

following circumstances:

(a) criminal violence;

(b) by accident;

(c) suddenly, when in apparent good health;

(d) by suicide;

(e) when unattended by a practicing physician;

(f) in any prison or penal institution;

(g) when in police custody;

(h) in any suspicious or unusual circumstances;

(i) by criminal abortion;

(j) by poison;

(k) by disease constituting a threat to the public health;

(l) by disease, injury, or toxic agent resulting from employment;

(m) when a corpse is brought into the state without proper medical certification;

(n) when a corpse is to be cremated or dissected.

(2) The county coroner shall perform or have performed an investigation into any death upon request of the attorney general or county attorney.

(3) After his initial examination and investigation the coroner shall immediately prepare a written report of his findings in duplicate. He shall retain one copy and provide a copy to the state medical examiner.

(4) The state medical examiner has authority in any death with circumstances enumerated above to perform or have performed an autopsy or any other laboratory examination he considers necessary or in the public interest.

Section 16. Exemption from liability. No criminal or civil action may arise against a medical examiner for performing an autopsy under this act.

Section 17. Property of deceased — disposition. (1) Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner or the coroner to the appropriate public administrator to be held until disposed of according to law.

(2) Property needed as evidence shall be relinquished to the appropriate investigative authority.

Section 18. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

Section 19. Appointment of deputy coroners. (1) The

coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) A deputy coroner may be the coroner from another county.

Section 21. Suspicious death — duty to report — control of corpse. (1) It is the duty of any person aware of the death of a person under the circumstances described in [section 14 of this act] to report the death and circumstances immediately to the coroner.

(2) Upon notification of the death, the coroner shall immediately examine or otherwise take charge of the corpse.

Section 22. Penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than one year, or both, if he:

(1) willfully fails to report or conceals a death described in [section 14 of this act];

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, willfully touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

Section 22. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, he shall make available in writing to the county attorney his determination as to the cause of death.

Section 23. Records — custodian. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

Section 24. Evidence — disposition and custody. (1) Any evidence or specimen coming into the possession of the coroner or state medical examiner in connection with any investigation or autopsy may be retained by him or delivered to any law enforcement officer assigned to the investigation of the death.

(2) Any evidence material to the determination of the cause of death in possession of the law enforcement officers assigned to the investigation of the death shall be made available to the state medical examiner, his associate, and the county coroner.

Section 25. Duties of county attorney. Each county attorney shall establish and maintain liaison with the state medical examiner, coroner, and law enforcement investigating agency during an investigation into the cause of death

within his county.

Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Repealer. Sections 16-3403, 16-3405, 16-3409, 95-801, 95-802, 95-810, and 95-814, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 235-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 77, there is hereby submitted a Fiscal Note for House Bill 461 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the Division of Forensic Science in the Department of Justice; providing for its administration, duties and functions; providing for a laboratory of criminalistics; altering the duties of the coroner, and repealing various sections.

ASSUMPTIONS:

1. Expenditures will provide funding for administrative costs only. Equipment for the laboratory is already purchased and in place at the drug analysis lab in Missoula.
2. The board will decide where the facilities for the laboratory of criminalistics will be located.

FISCAL IMPACT:

	FY 78	FY 79
Personal services (4 FTE in FY 78; 5 FTE in FY 79)	$ 97,287	$108,838
Operating expenses	66,128	78,810
Equipment	7,130	1,330
Additional cost of proposed legislation	$170,545	$188,978

Richard L. Transtrom for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 4, 1977

PUBLIC HEALTH WELFARE & SAFETY COMMITTEE
45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 461	TO CREATE THE DIVISION OF FORENSIC SCIENCE IN THE DEPT. OF JUSTICE	1/24/77	Holmes, Keyser	2/8/77	Subcomm. 2/8/77 DO PASS AS AMENDED	2/15/77
HB 480	TO GENERALLY REVISE THE LAWS CONCERNING COMMUNITY MENTAL HEALTH CENTERS.	1/24/77	Bengtson, Dussault, et al	2/8/77	DO PASS AS AMENDED	2/17/77
HB 490	TO ALLOW BD. OF MED. EXAMINERS TO WAIVE PERSONAL APPEARANCES BEFORE THE BOARD PRIOR TO ISSUING A LICENSE TO PRACTICE MEDICINE.	1/24/77	Nathe	2/10/77	DO PASS	2/10/77
HB 298	TO REQUIRE DEPTS., INSTITUTIONS, AGENCIES, ETC. TO PROCURE PRODUCTS & SERVICES FROM SHELTERED WORKSHOPS & WORK ACTIVITY CENTERS.	1/26/77	Bengtson, Dussault, et al	2/8/77	DO PASS AS AMENDED	2/8/77
HB 523	TO ALLOW DEPT. OF SRS TO RECEIVE APPLICATIONS FOR DAY CARE LICENSES FROM INDIANS RESIDING ON A RESERVATION.	1/26/77	Kennerly, Waldron, et al	2/15/77	DO PASS	2/17/77
HJR 38	COMMENDING HOUSEWIVES & MOTHERS & EXPRESSING THE LEGISLATURE'S INTENTION TO SUPPORT LEGISLATION REAFFIRMING & STRENGTHENING THE SOLIDITY OF THE HOME.	1/26/77	Tower, Conroy, et al	2/10/77	DO PASS	2/10/77

5

February 8, 1977

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE PROCEEDINGS:

A meeting of the House Public Health, Welfare and Safety Committee was held on Tuesday, February 8, 1977 at 3:00 P.M. in Room 431 of the State Capitol. All members were present.

The first bill heard was HOUSE BILL 387, sponsored by Representative Moore. This is a revenue-producing bill. It requires that those persons who dispense, sell, or give away drugs, mechanical articles, etc. be licensed at $10 per year by the Board of Pharmacy. It requires that these articles be advertised in a discreet and tasteful manner. There were no other proponents.

There were no opponents to HOUSE BILL 387. The sponsor closed. Questions were asked. Representative Cooney wanted to know why the bill was needed, and Gordon Dillow replied that some months ago there had been problems with an ad in the Kaimen (U of M Student Newspaper). At present there is no law concerning advertising of these goods. When this ad was printed, the County Attorney told the editor that this was against the law; the ad was withdrawn. It was stressed that this bill only aims to insure that dispensers of these articles would be controlled within the state.

HOUSE BILL 461 was heard. Representative Holmes as chief sponsor said that passage of this bill would help insure clear proof in court. The bill is one of the top five priorities of the recommendations made from a two-year project. Gerald Dunbar, Montana Chiefs of Police Association, and also a member of the Montana Justice Project, then spoke. Because of financial problems in the past, this bill has never been able to pass. The bill still needs more studying done on it. Chuck O'Reilly, Assistant Director of the Montana Justice Project spoke, stating that the need for such capabilities has been long needed in the state. It takes from six weeks up to four or five or more months to obtain results from the Federal Crime Lab in Washington. Montana has more than six times the necessary requirements to establish a lab in the state. The only approach would be to establish a temporary two-year Board of Forensic Science; it is not their intent to create another permanent board. After these two years are finished, the Forensic Science system would be part of the Department of Criminology. He stressed that much work has gone into this research and it is evident that there is no longer any doubt about the need for a Forensic Science Division in the state. Mike McGrath, Attorney General's Office, stated that there have been objections from various parties, and that there were amendments to the bill which were forthcoming, which should solve these problems. Representative Scully then spoke, having been a member of the Law Enforcement Task Force. For too long these people have been involved in the politics of personalities, but there has been no one who has disagreed about the need for the forensic sciences lab. In light of the fact that there are some

amendments which will be submitted, he asked the committee to form a subcommittee to deal with the bill. He also pointed out that the automatic sunset and death of the Board had been included in this bill at his insistence.

It was the intention of the Head of the Department, who is a forensic pathologist, to cut the fiscal impact of this bill. The concept given this bill has evolved around the desire to accomplish it with as little expense as possible. He urged the consideration of the merits of the bill rather than those of the personalities attached to it. Tom Dowling, County Attorneys Association, was in full accord with the concept proposed in the bill, and offered his services to the proposed subcommittee for working on amendments. He stressed that it was about time that we had forensic ability in Montana. At present there is only one pathologist in a five-state area encompassing Montana. Mike Nelson, Montana Coroner's Association, then spoke. The bill originally did not provide that a full-time coroner serve on the Task force; the tentative amendments would put his association in complete support of the long overdue bill. There were no further proponents.

Appearing as neither a proponent nor an opponent to HOUSE BILL 461 was Don Pratt, Executive Director of the Montana Funeral Association. He was concerned about the impact this bill would have on people in the rural areas, and supported the suggestion to put the bill in a subcommittee. Representative Holmes closed. Questions followed. A motion was made to assign a subcommittee. Motion carried with one member opposed.

The next bill heard was HOUSE BILL 480, sponsored by Representative Bengtson. This bill would give support to the deinstitutionalization program in Montana. This program is the best alternative we have and to fund and support it is the best thing we need to do. She explained the bill section by section. The maximum state funds that can be appropriated for regional mental health insurance contracts have been revised to cover a maximum of 90% of the funding. She called attention to Senate Joint Resolution 15, expressing the Legislature's intent to adequately maintain funding for community health centers, which was passed unanimously in the Senate. Dr. Bryce Hewett, Director of the South Central Mental Health Center in Billings appeared on behalf of himself. Essentially, the services rendered used to be 100% financed by the state. John Nesbo, Toole County Commissioner and Chairman of the Region 2 Mental Health Center, is in support of the bill, but objects to the mandatory participation portion; see prepared statement. Frank Lane, Director of Region 1 Community Health Center, Clark Anderson, Region 5 Director of the Community Health Center, Joe Harrington, Region IV, Phil Powers, Department of Institutions, Clyde Cromwell, Chairman Region III Mental Health Board, and others stood and stated their support of the bill.

Nancy Lien, Mental Health Advisory Council, stated that there is an urgent need for consistency in funding across the state; see prepared statement. Jan Brown, a Mental Health Association volunteer

in the outcome of the bill because (1) the more the workshop activities the more possibility of each client gaining experience that may lead to competitive employment and (2) it is much better to fund client programs through earnings than through subsidy. Representative Porter spoke up in support of this bill. There were no opponents. Questions were asked. It was pointed out that this bill did not require a fiscal note, as the state already was purchasing these services; and why not give these people a job instead of out-of-state organizations? Luther Glenn, Department of Administration, expressed their support of the concept. The hearing was closed.

The committee then went into executive session to consider the following bills: Representative Holmes moved that HOUSE BILL 298 DO PASS AS AMENDED per the sponsor's amendments. Representative Porter seconded the motion; motion carried unanimously.

HOUSE BILL 285. Representative Harper presented amendments to the committee which cleared up several problems the opponents had with the bill. Representative Kimble moved that AS SO AMENDED DO PASS; Representative Holmes seconded it. Representative Gould made a substitute motion that the bill DO NOT PASS. Discussion followed.

Representative Gould feels that the legislature should be doing everything possible to promote the good quality of air, water, etc., and we should leave it up to these people to take punitive actions. He feels that it is one of the worst bills the Department of Health has ever proposed. Representative Porter felt that the Legislature should encourage people to put pollution control devices on their equipment, and not penalize them. Representative Harper stressed that all the bill is saying is that we need to clarify the law, because it is unclear now; It is condusive to conflict and argument. Representative Holmes made a motion for all motions pending that the bill be amended; motion carried unanimously. The motion of DO NOT PASS AS AMENDED was then voted on - motion carried; see roll call vote. Representative Cooney brought up the possibility of moving this bill to Taxation and it was discussed.

SENATE BILL 29 was heard at this point. Mr. John Bobinski spoke on behalf of the sponsor, Senator Blaylock. He assured the committee that there were no substantive changes made in the bill, and mainly it was a housecleaning recodification measure. There were no further proponents nor were there any opponents to this bill. The hearing was closed.

The committee then went back into executive session. It was moved and seconded that HOUSE BILL 387 DO PASS. Representative Ryan made a substitute motion that it DO NOT PASS. Discussion followed. The substitute motion failed;see roll call vote. Further discussion took place. The original motion of DO PASS was then voted on; see roll call vote. It also failed.

A subcommittee was assigned to consider HOUSE BILL 461. Representatives Feda, Cox, Vinger, Kenny, Holmes and Menahan shall form the subcommittee.

It was announced that HOUSE JOINT RESOLUTION 38 will be heard at the next meeting, on Thursday, February 10, 1977.

February 15, 1977

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE PROCEEDINGS:

A meeting of the House Public Health, Welfare and Safety Committee was held on Tuesday, February 15, 1977 at 10:00 a.m. in Room 431 of the State Capitol. All members were present with the exception of Reps. Palmer, Gould, Metcalf, Porter and Kimble, who were excused.

The first bill heard was HOUSE BILL 523. The sponsor was Rep. Kennerly. This bill is trying to correct some problems within the law. Passage of the bill would allow the Dept. of SRS to receive applications for day care licenses from Indians residing on Indian reservations. SRS funds are federal funds administered by the state and the state does not have the jurisdiction to license centers on Indian reservations; therefore they are not eligible for federal funds, simply because of a technicality of the law. This is a simple thing and has been done in other areas in the past. Merle R. Lucas, Coordinator of Indian Affairs for the State of Montana, then spoke. If a center were to default, the state would simply not relicense it. There were no opponents to HB 523. Questons were asked.It was explained that the bill would not require a fiscal note, as only federal funds would be involved. The sponsor closed. The Welfare Dept. will be the "watchdog" for the implementation of this bill.

HOUSE BILL 724, sponsored by Rep. Lynch, was heard next. He explained that he had introduced the bill at the request of Bob Fowler, MHD project in Butte. It has been proven that asbestos is a problem if it is abused; this simply prohibits that abuse. Ernie Post then spoke in favor of the bill; see prepared statement. No opponents spoke. Questions were then asked. It was reassured that passage of this bill would not do away with the use of asbestos, it would only control it. The bill was copied from a similar measure proposed in Ohio. It was unclear whether this subjuct was already covered in the OSHA regulations.

HOUSE BILL 371 was then heard. The sponsor, Rep. Harper, distributed amendments to the bill which modified its wording to incorporate the most recent definition of death, as proposed by the American Bar Assoc. The present law is common law; in the absence of breathing, pulse and heartbeat the patient is dead. The problem we are facing is that the common law definition of death does not jibe with medical definitions any more. The advances in the field of transplants is making this problem apparent. More and more states are passing this type of legislation. He gave several points proving the merits of the definition put forth in the amended version of the bill, such as: (1) it permits judicial determination; (2) it avoids religious determination of any facts; and so on. This bill should not be confused with euthenasia. Under the proposed definition of death, Karen Quinlan could not have been killed in the euthenasia sense. The problem is that it is very difficult to get a vital organ in good enough condition to transplant under the current law. Schematic injury occurs under the current common law definition at a much higher rate than under the new definition. Sen.Dover spoke up in favor of the bill. He feels that the brain is what determines whether or not the patient is alive. This definition has stood up in several court cases. It has worked for everyone involved. Chad Smith, Montana Hospital Association, then spoke. He feels that the bill as amended is acceptable. Gerald J. Neely, Montana Medical Assoc. was the

It was moved and seconded that HOUSE BILL 338 DO PASS. Motion carried unanimously.

Rep. Ryan moved that HOUSE BILL 461 DO PASS. Discussion took place. Several amendments were considered. The amendments were then moved and they were accepted. The motion of DO PASS AS AMENDED was then voted on and the motion carried unanimously.

HOUSE BILL 608 was voted on. Rep. Feda moved and it was seconded by Rep. Gunderson that it DO NOT PASS. Motion carried with Rep. Stobie opposed.

The meeting was adjourned.

Rep. Wm. "Red" Menahan - Chairman

Secretary

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 396	3-4-77	3-11-77	3-11-77				3-11-77		
H.B. 411	3-2-77	3-17-77	3-24-77					3-24-77	
H.B. 456	2-14-77	3-8-77	3-19-77						3-19-77
H.B. 457	3-2-77	3-22-77	3-30-77					3-30-77	
H.B. 461	4-6-77	4-8-77	4-12-77				4-12-77		
H.B. 472	2-19-77	3-17-77	3-18-77				3-18-77		
H.B. 483	2-10-77	2-21-77	2-21-77					2-21-77	
H.B. 492	2-14-77	3-7-77	4-1-77					4-1-77	
H.B. 497	2-25-77	3-15-77	3-15-77				3-15-77		
H.B. 498	2-17-77	3-18-77	3-30-77					3-30-77	
H.B. 499	2-14-77	3-4-77	4-2-77					4-2-77	
H.B. 500	2-14-77	3-7-77	3-7-77				3-7-77		
H.B. 513	2-14-77	3-8-77	3-24-77					3-24-77	
H.B. 533	2-25-77	3-18-77	3-19-77				3-19-77		
H.B. 544	3-5-77	3-23-77	4-1-77						4-1-77
H.B. 567	2-17-77	3-2-77	3-29-77					3-29-77	

(Separate Sheet for Senate, House Bills, and Resolutions)

HOUSE BILL NO. 461

INTRODUCED BY HOLMES, KEYSER

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE DIVISION OF FORENSIC SCIENCE IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR ITS ADMINISTRATION, DUTIES, AND FUNCTIONS; PROVIDING FOR A LABORATORY OF CRIMINALISTICS; ALTERING THE DUTIES OF THE CORONER; AMENDING SECTIONS 16-3401, 16-3409, 95-801, AND 95-802 AND REPEALING SECTIONS 16-3402, 16-3403~~, 16-3405, 16-3409, 95-801, 95-802~~, 95-810, AND 95-814, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act shall be known as the "Montana Forensic Science System Act".

Section 2. Purpose. The purpose of this act is to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

Section 3. Creation of division of forensic science -- head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title is state medical examiner and who shall be appointed by the board of forensic science. He shall be a forensic pathologist qualified or certified by the American board of ~~pathologists of the American medical association~~ PATHOLOGY.

Section 4. Functions of the division. The functions of the division include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology.

Section 5. Authority to accept grants. The division of forensic science is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this act.

Section 6. Board of forensic science -- establishment-composition. (1) The board of forensic science is established within the department of justice.

(2) There shall be 15 board members appointed by the ~~governor~~ ATTORNEY GENERAL.

(3) The board shall be representative of state and local governments and law enforcement agencies and the medical profession. It shall include:

(a) an incumbent mayor recommended by the Montana league of cities and towns;

(b) an incumbent county commissioner recommended by

THIRD READING

the Montana association of counties;

(c) a prosecutor recommended by the Montana association of county attorneys;

(d) the chairman of the peace officers' standards and training advisory council;

(e) an incumbent chief of police recommended by the Montana chiefs of police association;

(f) an incumbent sheriff recommended by the Montana sheriffs and ~~police~~ PEACE officers association;

(g) a deputy sheriff recommended by the Montana sheriffs and ~~police~~ PEACE officers association;

(h) a police officer recommended by the Montana police protective association;

(i) a member recommended by the chief of the Montana highway patrol;

(j) a member recommended by the director of the department of fish and game;

(k) a member recommended by the attorney general;

(l) a medical doctor;

(m) a medical pathologist;

(n) a member possessing a graduate degree in one of the forensic sciences; and

(o) a county coroner RECOMMENDED BY THE MONTANA CORONERS ASSOCIATION.

Section 7. Duties of board. The board of forensic

science shall:

(1) establish a laboratory of criminalistics;

(2) APPOINT A STATE MEDICAL EXAMINER AND provide procedures consistent with this act for the employing of all necessary personnel; and

(3) establish policy and set all necessary procedures for the functioning of the division of forensic science.

Section 8. Rules authorized. The board of forensic science is authorized to adopt rules necessary to accomplish the purposes of this act.

Section 9. Termination of board. (1) All necessary functions of the board shall be completed within a 2-year period from the effective date of this act.

(2) Upon the termination of the 2-year period the board shall no longer exist. FOLLOWING DISSOLUTION OF THE BOARD, THE ATTORNEY GENERAL IS AUTHORIZED TO EMPLOY SUCH PERSONNEL AS MAY BE NECESSARY TO CONDUCT THE AFFAIRS OF THE DIVISION OF FORENSIC SCIENCE.

Section 10. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this act;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing the director of the laboratory of criminalistics;

(6) appointing one or more associate medical examiners who serve at his pleasure; and

(7) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

Section 11. Associate medical examiners -- qualifications -- remuneration. (1) Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

(2) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(3) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

Section 12. Purpose and function of laboratory. (1)

The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers, and all state agencies, and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

(3) The laboratory may charge reasonable fees for its services, except that it may not charge STATE, county, city, or municipal law enforcement officers or coroners OF THIS STATE for services rendered. FEES COLLECTED UNDER THIS SUBSECTION SHALL BE DEPOSITED IN AN ACCOUNT IN THE EARMARKED REVENUE FUND IN THE STATE TREASURY AND USED TO PAY OPERATION EXPENSES OF THE LABORATORY.

Section 13. Responsibilities of laboratory director. The laboratory director shall:

(1) be responsible to the state medical examiner for supervision and direction of the laboratory;

(2) appoint laboratory personnel ~~rendering decisions as to the disposition of specimens; and~~;

(3) RENDER DECISIONS AS TO THE DISPOSITION OF SPECIMENS;AND

~~(3)~~(4) perform all other duties required by the rules

of the division.

Section 14. Removal of state medical examiner and laboratory director. The state medical examiner and the laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing ~~on verified charges filed at least 20 days before the hearing and served at least 20 days before the hearing~~ PURSUANT TO 82A-1014.

~~Section 15. Procedures upon suspicious deaths. (1) The coroner shall make or have performed any investigation he considers necessary whenever a death occurs or a body is found in his county and the death occurred under any of the following circumstances:~~

~~(a) criminal violence;~~

~~(b) by accident;~~

~~(c) suddenly, when in apparent good health;~~

~~(d) by suicide;~~

~~(e) when unattended by a practicing physician;~~

~~(f) in any prison or penal institution;~~

~~(g) when in police custody;~~

~~(h) in any suspicious or unusual circumstances;~~

~~(i) by criminal abortion;~~

~~(j) by poison;~~

~~(k) by disease constituting a threat to the public health;~~

~~(l) by disease, injury, or toxic agent resulting from employment;~~

~~(m) when a corpse is brought into the state without proper medical certification;~~

~~(n) when a corpse is to be cremated or dissected.~~

~~(2) The county coroner shall perform or have performed an investigation into any death upon request of the attorney general or county attorney.~~

~~(3) After his initial examination and investigation the coroner shall immediately prepare a written report of his findings in duplicate. He shall retain one copy and provide a copy to the state medical examiner.~~

~~(4) The state medical examiner has authority in any death with circumstances enumerated above to perform or have performed an autopsy or any other laboratory examination he considers necessary or in the public interest.~~

Section 15. Exemption from liability. No criminal or civil action may arise against a medical examiner for performing an autopsy under this act.

Section 16. Property of deceased -- disposition. ~~(1)~~ Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner or the coroner to the appropriate public administrator to be held until disposed of according to law.

~~(2)--Property-needed-as-evidence-shall-be--relinquished to-the-appropriate-investigative-authority.~~

Section 17. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

Section 18. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) A deputy coroner may be the coroner from another county.

~~Section-21.~~20. ~~Suspicious-death---duty-to--report---control--of--corpse.--(1)-It-is-the-duty-of-any-person-aware of-the-death-of-a-person-under-the--circumstances--described in--[section--14~~ 15 ~~of--this--act]-to-report-the-death-and circumstances-immediately-to-the-coroner.~~

~~(2)--Upon-notification-of-the-death,-the-coroner--shall immediately--examine-or-otherwise-take-charge-of-the-corpse.~~

Section 19. Penalty. A person is guilty of a

misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than one year, or both, if he:

(1) willfully fails to report or conceals a death ~~described-in-[section-14~~ 15 ~~of-this-act];~~

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, willfully touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

Section 20. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, he shall make available in writing to the county attorney his determination as to the cause of death.

Section 21. Records -- custodian. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

~~Section-24.--Evidence---disposition-and-custody.---(1) Any--evidence--or-specimen-coming-into-the-possession-of-the coroner-or-state-medical-examiner--in--connection--with--any~~

~~investigation or autopsy may be retained by him or delivered to any law enforcement officer assigned to the investigation of the death.~~

~~(2) Any evidence material to the determination of the cause of death in possession of the law enforcement officers assigned to the investigation of the death shall be made available to the state medical examiner, his associates, and the county coroner.~~

~~Section 25. Duties of county attorney. Each county attorney shall establish and maintain liaison with the state medical examiner, coroner, and law enforcement investigating agency during an investigation into the cause of death within his county.~~

SECTION 22. SECTION 16-3401, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"16-3401. Coroner to hold inquest. The coroner must hold inquests, as provided in ~~sections 94-201-1 to 94-201-12~~ Title 95, chapter 8."

SECTION 23. SECTION 16-3409, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"16-3409. Inquest in case of prisoners in state prison. When a prisoner confined in the state prison shall die, the coroner of the county wherein the state prison is located may hold an inquest as provided in ~~sections 94-201-1 to 94-201-12~~ Title 95, chapter 8."

SECTION 24. SECTION 95-801, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"95-801. The office of the coroner. ~~When~~ Whenever a coroner is informed that a death ~~or stillbirth~~ was caused by other than natural causes or that a death ~~or stillbirth~~ has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct, or when no physician or surgeon, licensed in the state of Montana, will sign a death certificate, the coroner shall make an investigation thereof. It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred. In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case."

SECTION 25. SECTION 95-802, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"95-802. Coroner to have autopsy -- when. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a ~~physician or pathologist~~ medical examiner to perform it. A full record of the facts found shall be made on a form provided by the ~~Montana state board of health in duplicate~~ division of forensic science in

2

triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney. The right to conduct an autopsy shall include the right to retain such specimens as the ~~physician--or--pathologist~~ medical examiner performing the autopsy deems necessary. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(2) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner."

Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Repealer. Sections 16-3402, 16-3403, ~~16-3405, 16-3409, 95-801, 95-802,~~ 95-810, and 95-1114, R.C.M. 1947, are repealed.

-END-

12

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 8, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All committee members were present except Senators Regan and Roberts who were excused to attend other meetings.

WITNESSES PRESENT TO TESTIFY:

Rep. Holmes - Billings
Chuck O'Reilly - asst. director of the Justice Project
Mike McGrath - Department of Justice
Jack Williams - Chiefs of Police Assn. & Helena Chief of Police
Mickey Nelson - Montana Coroners Assn., Lewis & Clark Co. Coroner
Don Pratt - executive director of the Montana Funeral Directors Assn.
Tom Honzel - Montana County Attorneys Assn.
Rep. Gould - Missoula
Capt. D. Tooley - Montana Highway Patrol
Allen Toftely - Montana Highway Traffic Safety Division
Rep. Ramirez - Billings

CONSIDERATION OF HOUSE BILL 461:

Rep. Holmes of Billings, sponsor of the bill, told the committee that Montana should have a forensic laboratory because its population of 735,000 is greater than the number of residents which are recommended for one. She also said that it often takes 6 weeks for Montana to send evidence to Washington or another state and receive the evidence and results back. There is a lot of expense to having evidence tested in this manner because sometimes it has to be carried by hand on an airliner. Montana does have a lab in Missoula which analyzes drugs, etc., but it cannot test other evidence. During the study by the Crime Control task force, there was a call for a forensic lab to be established in Montana. The bill was accompanied by a second bill which was the bill for funding of a lab. The House passed the funding bill and this bill with the idea they would be ready to go into effect in 2 years. This has to be done, and Montana is going to be paying for it anyway. She submitted a newspaper article on the subject of a forensic lab and a forensic lab pathologist. (See Exhibit 1) Rep. Holmes also proposed some amendments for this bill. (See Exhibit 2). She then asked that the word "shall" be stricken on page 11, line 22, and that an "s" be added to "die" in that line also.

Chuck O'Reilly, assistant director of the Justice Project, was the first proponent of this bill to testify. He said the general counsel for the study commission had drafted this bill and that

Montana has six times the number of part I crimes as is necessary to have a forensic lab. He has talked with other states which feel that a state of this size, and with the number of crimes Montana has, should have a lab. If this is not passed during this session, we can probably forget the funding. This is not a spur of the moment thing because many associations have been involved in the study of it for some time.

Mike McGrath from the Department of Justice was the next proponent to testify. He said that this is an extremely important bill and that a good deal of time has been put into it. This was the No. 1 priority bill of the project. It provides for a medical examiner system and establishes a crime lab. It also calls for a 15-member board to be appointed to implement both of these things and to make rules, regulations, procedures, and hire the medical examiner and pick the location for the lab. There is somewhat of a problem in regard to the medical examiner and what happens in a suspicious death. They are asking for leadin time to try to get federal funds to implement this program.

Jack Williams, Helena Chief of Police, representing the Chiefs of Police Assn., said that they are in favor of this bill because too many times they are delayed in the field because they do not have a lab. They have to use out-of-state labs, and that takes much more time to obtain results. If Montana had a lab, we could probably get results on our evidence within one day to a week which would be a great help.

The next proponent was Mickey Nelson, representing the Montana Coroners Assn., who said that this bill may take care of the problem of funding if theproposed amendments of Rep. Holmes are adopted. Without the proposed amendments, this association is not in full accord with the bill.

Don Pratt, executive director of the Montana Funeral Directors Assn., said that their problem with the bill is that they are not allowed a member on the proposed 15-man board. He proposed an amendment to remedy that situation. (See Exhibit 3)

Tom Honzel, representing the Montana County Attorneys Assn., was the next proponent to testify. He told the committee of an instance in Helena where the judge ordered a trial in 3 weeks and the evidence could not be sent to Washington for testing and the results received in that time. However, in that case they sent the evidence to Oregon for testing and hope that it will be returned in time for the trial. Therefore, if Montana did have a lab it would help be a great help.

Mike McGrath told the committee at this time that the Justice Department was adding some repealers to the bill and that they would have them incorporated into Rep. Holmes proposed amendments for the committee's consideration.

There were no opponents to the bill. Questions were asked by committee members. The witnesses were thanked by the Chairman and excused.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 4-8-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman			✓
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat			✓
TOWE, Tom	✓		
WARDEN, Margaret	✓		

Each day attach to minutes.

State crime lab, pathologist urged

BY DARYL FARNSWORTH
Of The Gazette Staff

- For autopsies Billings murder victims must be flown to Great Falls
- Criminal evidence is sent to the FBI in Washington for analysis

Some areas of law enforcement in Montana are nearly 20 years behind the times, according to Gerald Dell, Yellowstone County Undersheriff.

Dell says the lack of a forensic crime laboratory and only one forensic pathologist are prime examples of the state's backwardness.

Presently, criminal evidence, such as a suspected murder weapon, the victim's clothing, bullets or bloodstains, are sent to the FBI Criminalistics Lab in Washington, D.C., for testing and analysis.

Bodies of murder victims in the state must be flown to Great Falls for a forensic autopsy.

(Forensic pathology is the study of human tissues for evidence in legal proceedings.)

These routine procedures are expensive. An example: It cost the city of Billings $1,200 for evidence in the Tillotson murder case to be sent to the FBI lab, according to retired Police Chief Gerald T. Dunbar.

"In an effort to hurry the results back we sent deputy Jack Trimarco along with the evidence ... he hand-carried the alleged murder weapon to the FBI lab," Dunbar said.

Three bodies from Billings have been sent to Great F[illegible] 1977: A man who drowned in the Big Ditch, a man shot to death in his bedroom and a young woman found shot to death near the city landfill.

The law enforcement agency investigating a crime must pay the cost of shipping evidence to the FBI lab, and air freight on a body if it is flown to Great Falls.

The cost of an autopsy is paid by the county coroner.

Yellowstone County Coroner Richard Taylor said a forensic autopsy costs about $300. A non-criminal autopsy runs about $150.

Taylor said those costs come out of the coroner's $17,202 budget. Taylor, who is not a pathologist, earns $3,750 annually as coroner.

Taylor presides at inquests, but he is not qualified to perform an autopsy. He owns and operates Billings Ambulance Service.

The forensic pathologist has a vital role in assisting the criminal prosecutor. "He must think like a cop," Dunbar said.

The forensic pathologist presents to investigators scientific evidence that he gathers from a post-mortem examination (autopsy). He also testifies at trials.

The analysis, identification and interpretation of physical evidence is termed criminalistics.

A criminalist is trained to recognize the physical evidence of a crime and separate it from the insignificant.

The primary aim of the criminalist is to apply objectively the natural and physical sciences to physical evidence and reconstruct events to prove a crime, and to connect or eliminate a suspect in that crime.

Lawmen say one forensic pathologist in Montana is not enough and more are needed to handle the heavy work loads.

House Bill 461, which asks for $359,523 to operate a crime lab in Montana for two years, was proposed by the Board of Crime Control.

The bill is being discussed by the House's Public Health and Safety subcommittee.

Dunbar, a lobbyist for the bill, said it is "well on its way to getting approved by the House and Senate."

The final obstacle for the bill is to get the state Appropriations Committee to earmark the money for the crime lab.

It is not known where the crime lab would be located, but the general feeling among law enforcement people is that Helena probably would get it because of its central location.

There is a drug testing laboratory in Missoula and the nearest crime lab is in Seattle, Wash.

Billings Police Chief Gene Kiser said he would "definitely like to see a forensic crime lab established in Montana."

25

Holmes
(EX. 2)

STANDING COMMITTEE REPORT
Senate Judiciary Committee

That House Bill No. 461 be amended as follows:

1. Amend the title, page 1, lines 9 and 10.
Following: "16-3409"
Strike: ", 95-801, AND 95-802"

2. Amend the title, page 1, line 9.
Following: "16-3401"
Strike: the comma ","
Insert: "and"

3. Amend the title, page 1, line 10.
Following: "16-3402,"
Insert: "95-801, 95-802"

4. Amend the title, page 1, line 11.
Following: "95-810"
Strike: "AND 95-814,"

5. Amend pages 12 and 13, beginning at page 12, line 1.
Strike: Sections 24 and 25 in their entirety.

6. Amend page 12, line 1.
Insert: Section 24. There is a new R.C.M. section numbered _____ that reads as follows:

"_____. Procedures upon suspicious deaths. (1) before a corpse is embalmed, cremated or dissected the coroner shall make or have performed any investigation he considers necessary whenever a death occurs or a body is found in his county and the death occurred under any of the following circumstances:

(a) criminal violence;

(b) by accident;

(c) suddenly, when in apparent good health;

(d) by suicide;

(e) when unattended by a practicing physician;

(f) in any prison or penal institution;

(g) when in police custody;

24

(h) in any suspicious or unusual circumstances;

(i) by criminal abortion;

(j) by poison;

(k) by disease constituting a threat to the public health;

(l) by disease, injury, or toxic agent resulting from employment;

(m) when a corpse is brought into the state without proper medical certification.

(2) The county coroner shall perform or have performed an investigation into any death upon request of the attorney general, county attorney or the medical examiner. The county coroner may request an autopsy be performed.

(3) It shall be the duty of every person acquiring knowledge of the death of a person under the circumstances described to report the same forthwith to the coroner of the county in which the death apparently occurred.

(4) In cases where criminal conduct is suspected, the coroner shall immediately notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

(5) After his initial examination and investigation the coroner shall immediately prepare a full record of the facts found on a form provided by the Division of Forensic Science in triplicate, the coroner, medical examiner, and county attorney each retaining one copy.

(6) The state medical examiner has the authority in any death under the circumstances herein described to perform or have performed an autopsy or any other laboratory examination he considers necessary or in the public interest.

(7) The right to conduct an autopsy shall include the right to retain such specimens as the medical examiner performing the autopsy deems necessary.

(8) In ordering an autopsy the state medical examiner shall order the body to be exhumed if it has been interred."

7. Amend page 13, line 16.
Renumber remaining sections in sequence.

27

8. Amend page 13, line 23.
Following: "~~16-3409,~~"
Reinstate: "95-801, 95-802,"

9. Amend page 13, line 16.
Following: 95-802.
Insert: "and"

10. Amend page 13, line 23.
Following: "95-810"
Strike: "and 95-814"

28

House Bill No. 461

Ex 3
Pratt

1. Amend page 3, Section 6, subsection (3).
   Following: "ASSOCIATION." on line 24
   Strike: "."
   Insert: "; and"

2. Amend page 3, Section 6, subsection (3).
   Following: line 24
   Insert: "(p) a funeral director recommended by the Montana funeral directors' association.

BEST COPY AVAILABLE

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
	[illegible]	461	✓	
[illegible]	[illegible]	461	✓	
[illegible]	MHP	355	✓	
[illegible]	[illegible]	461	✓	
[illegible]	[illegible]	[illegible]		
[illegible] Gould	Himself	261	✓	
[illegible] Gould	his bill	355	✓	
[illegible]	Highway Traffic Safety Div (DOA)	355	✓	
[illegible]	[illegible]	461	✓	
[illegible] Pratt	Mont Funeral Directors Assn	461	✓	
Tom Hoyzel (PAT)	Co Att'ys Assoc	461	✓	
Jack Ramirez (PAT)	Sponsor	261	✓	
[illegible] Hoyzel	County Attorneys	261	✓	

(Please leave prepared statements with Secretary)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 12, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All committee members were present except Senators Regan and Roberts who were excused to attend other meetings.

EXECUTIVE SESSION

The following bills were acted on in Executive Session this day:

HB 261 - Sen. Lensink moved that the Judiciary Committee endorse the concept of HB 261 but that, because of the fiscal note, the Judiciary Committee would like to have it moved to the committee on Finance & Claims. Senator Turnage will ask that HB 261 be referred to the Finance & Claims committee on Order of Business No. 6 this day.

HJR 7 - Sen. Towe moved to amend HJR 7 as follows:

To amend the title, line 9, following line 8, by striking "APPROVAL" and inserting "NOTIFICATION; and to amend page 1, line 17, following "prior" by striking "approval" and inserting "notification"; and to further amend page 1, on line 21, following "occur." by inserting "Persons in fire districts created under 11-2008 shall be exempt from the reporting requirements." The motion carried unanimously. He then moved that HJR 7 as amended BE CONCURRED IN. The motion carried with a vote of 5 - 3 as Sen. Roberts voted "Yes" and Sen. Regan voted "No" , so the 3 "No" votes were cast by Senators Olson, Lensink and Regan.

HB 461 - Sen. Hazelbaker of Dillon was present as a sponsor of this bill and gave a rundown to the committee on the previous session's action on this type of legislation. He said that this could be considered as enabling legislation without the proposed amendments, and that he would not like to see it turned down.

Sen. Towe moved that HB 461 BE CONCURRED IN. The motion carried unanimously as Senators Regan and Roberts both voted "Yes" also.

HB 357 - Sen. Towe moved the adoption of the attached amendments. (See Attach. #1) The motion carried unanimously. He then moved that HB 357 as amended BE CONCURRED IN. The motion failed on a vote of 2 - 5 with 1 abstaining. Senators Towe and Regan voted "Yes", Senators Turnage, Murray, Warden, Olson and Lensink voted "No", and Sen. Roberts abstained.

Sen. Olson then moved that HB 357 as amended BE NOT CONCURRED IN. The motion carried on a vote of 5 - 2 with 1 abstaining. Senators

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 4-12-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman			✓
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat			✓
TOWE, Tom	✓		
WARDEN, Margaret	✓		

HOUSE BILL NO. 461

INTRODUCED BY HOLMES, KEYSER

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE DIVISION OF FORENSIC SCIENCE IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR ITS ADMINISTRATION, DUTIES, AND FUNCTIONS; PROVIDING FOR A LABORATORY OF CRIMINALISTICS; ALTERING THE DUTIES OF THE CORONER; AMENDING SECTIONS 16-3401, 16-3409, 95-801, AND 95-802 AND REPEALING SECTIONS 16-3402, 16-3403, ~~16-3405, 16-3409, 95-801, 95-802~~, 95-810, AND 95-814, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act shall be known as the "Montana Forensic Science System Act".

Section 2. Purpose. The purpose of this act is to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

Section 3. Creation of division of forensic science -- head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title is state medical examiner and who shall be appointed by the board of forensic science. He shall be a forensic pathologist qualified or certified by the American board of ~~pathologists of the American medical association~~ PATHOLOGY.

Section 4. Functions of the division. The functions of the division include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology.

Section 5. Authority to accept grants. The division of forensic science is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this act.

Section 6. Board of forensic science -- establishment-composition. (1) The board of forensic science is established within the department of justice.

(2) There shall be 15 board members appointed by the ~~governor~~ ATTORNEY GENERAL.

(3) The board shall be representative of state and local governments and law enforcement agencies and the medical profession. It shall include:

(a) an incumbent mayor recommended by the Montana league of cities and towns;

(b) an incumbent county commissioner recommended by

33

the Montana association of counties;

(c) a prosecutor recommended by the Montana association of county attorneys;

(d) the chairman of the peace officers' standards and training advisory council;

(e) an incumbent chief of police recommended by the Montana chiefs of police association;

(f) an incumbent sheriff recommended by the Montana sheriffs and ~~police~~ PEACE officers association;

(g) a deputy sheriff recommended by the Montana sheriffs and ~~police~~ PEACE officers association;

(h) a police officer recommended by the Montana police protective association;

(i) a member recommended by the chief of the Montana highway patrol;

(j) a member recommended by the director of the department of fish and game;

(k) a member recommended by the attorney general;

(l) a medical doctor;

(m) a medical pathologist;

(n) a member possessing a graduate degree in one of the forensic sciences; and

(o) a county coroner RECOMMENDED BY THE MONTANA CORONERS ASSOCIATION.

Section 7. Duties of board. The board of forensic

science shall:

(1) establish a laboratory of criminalistics;

(2) APPOINT A STATE MEDICAL EXAMINER AND provide procedures consistent with this act for the employing of all necessary personnel; and

(3) establish policy and set all necessary procedures for the functioning of the division of forensic science.

Section 8. Rules authorized. The board of forensic science is authorized to adopt rules necessary to accomplish the purposes of this act.

Section 9. Termination of board. (1) All necessary functions of the board shall be completed within a 2-year period from the effective date of this act.

(2) Upon the termination of the 2-year period the board shall no longer exist. FOLLOWING DISSOLUTION OF THE BOARD, THE ATTORNEY GENERAL IS AUTHORIZED TO EMPLOY SUCH PERSONNEL AS MAY BE NECESSARY TO CONDUCT THE AFFAIRS OF THE DIVISION OF FORENSIC SCIENCE.

Section 10. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this act;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing the director of the laboratory of criminalistics;

(6) appointing one or more associate medical examiners who serve at his pleasure; and

(7) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

Section 11. Associate medical examiners -- qualifications -- remuneration. (1) Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

(2) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(3) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

Section 12. Purpose and function of laboratory. (1)

The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers, and all state agencies, and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

(3) The laboratory may charge reasonable fees for its services, except that it may not charge STATE, county, city, or municipal law enforcement officers or coroners OF THIS STATE for services rendered. FEES COLLECTED UNDER THIS SUBSECTION SHALL BE DEPOSITED IN AN ACCOUNT IN THE EARMARKED REVENUE FUND IN THE STATE TREASURY AND USED TO PAY OPERATION EXPENSES OF THE LABORATORY.

Section 13. Responsibilities of laboratory director. The laboratory director shall:

(1) be responsible to the state medical examiner for supervision and direction of the laboratory;

(2) appoint laboratory personnel ~~rendering decisions as to the dispositions of specimens; and~~;

(3) RENDER DECISIONS AS TO THE DISPOSITION OF SPECIMENS; AND

~~(3)~~(4) perform all other duties required by the rules

of the division.

Section 14. Removal of state medical examiner and laboratory director. The state medical examiner and the laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing ~~on verified charges filed at least 20 days before the hearing and served at least 20 days before the hearing~~ PURSUANT TO 82A-1014.

~~Section 15. Procedures upon suspicious deaths. (1) The coroner shall make or have performed any investigation he considers necessary whenever a death occurs or a body is found in his county and the death occurred under any of the following circumstances:~~

~~(a) criminal violence;~~

~~(b) by accident;~~

~~(c) suddenly, when in apparent good health;~~

~~(d) by suicide;~~

~~(e) when unattended by a practicing physician;~~

~~(f) in any prison or penal institution;~~

~~(g) when in police custody;~~

~~(h) in any suspicious or unusual circumstances;~~

~~(i) by criminal abortion;~~

~~(j) by poison;~~

~~(k) by disease constituting a threat to the public health;~~

~~(l) by disease, injury, or toxic agent resulting from employment;~~

~~(m) when a corpse is brought into the state without proper medical certification;~~

~~(n) when a corpse is to be cremated or dissected.~~

~~(2) The county coroner shall perform or have performed an investigation into any death upon request of the attorney general or county attorney.~~

~~(3) After his initial examination and investigation the coroner shall immediately prepare a written report of his findings in duplicate. He shall retain one copy and provide a copy to the state medical examiner.~~

~~(4) The state medical examiner has authority in any death with circumstances enumerated above to perform or have performed an autopsy or any other laboratory examination he considers necessary or in the public interest.~~

Section 15. Exemption from liability. No criminal or civil action may arise against a medical examiner for performing an autopsy under this act.

Section 16. Property of deceased -- disposition. ~~(1)~~ Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner or the coroner to the appropriate public administrator to be held until disposed of according to law.

~~(2)--Property needed as evidence shall be relinquished to the appropriate investigative authority.~~

Section 17. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

Section 18. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) A deputy coroner may be the coroner from another county.

~~Section 21.~~ 20. ~~Suspicious death -- duty to report -- control of corpse. (1) It is the duty of any person aware of the death of a person under the circumstances described in [section 14 15 of this act] to report the death and circumstances immediately to the coroner.~~

~~(2) Upon notification of the death, the coroner shall immediately examine or otherwise take charge of the corpse.~~

Section 19. Penalty. A person is guilty of a

misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than one year, or both, if he:

(1) willfully fails to report or conceals a death ~~described in [section 14 15 of this act];~~

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, willfully touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

Section 20. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, he shall make available in writing to the county attorney his determination as to the cause of death.

Section 21. Records -- custodian. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

~~Section 24. Evidence -- disposition and custody. (1) Any evidence or specimen coming into the possession of the coroner or state medical examiner in connection with any~~

~~investigation or autopsy may be retained by him or delivered to any law enforcement officer assigned to the investigation of the death.~~

~~(2) Any evidence material to the determination of the cause of death in possession of the law enforcement officers assigned to the investigation of the death shall be made available to the state medical examiner, his associate, and the county coroner.~~

~~Section 25. Duties of county attorneys. Each county attorney shall establish and maintain liaison with the state medical examiner, coroner, and law enforcement investigating agency during an investigation into the cause of death within his county.~~

SECTION 22. SECTION 16-3401, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"16-3401. Coroner to hold inquest. The coroner must hold inquests, as provided in ~~sections 94-201-1 to 94-201-12~~ Title 95, chapter 8."

SECTION 23. SECTION 16-3409, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"16-3409. Inquest in case of prisoners in state prison. When a prisoner confined in the state prison shall die, the coroner of the county wherein the state prison is located may hold an inquest as provided in ~~sections 94-201-1 to 94-201-12~~ Title 95, chapter 8."

SECTION 24. SECTION 95-801, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"95-801. The office of the coroner. ~~When~~ Whenever a coroner is informed that a death ~~or stillbirth~~ was caused by other than natural causes or that a death ~~or stillbirth~~ has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct, or when no physician or surgeon, licensed in the state of Montana, will sign a death certificate, the coroner shall make an investigation thereof. It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred. In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case."

SECTION 25. SECTION 95-802, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"95-802. Coroner to have autopsy -- when. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a ~~physician or pathologist~~ medical examiner to perform it. A full record of the facts found shall be made on a form provided by the ~~Montana state board of health in duplicate~~ division of forensic science in

triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney. The right to conduct an autopsy shall include the right to retain such specimens as the ~~physician--or--pathologist~~ medical examiner performing the autopsy deems necessary. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(2) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner."

Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Repealer. Sections 16-3402, 16-3403, ~~16-3405, 16-3409, 95-801, 95-802,~~ 95-810, and 95-814, R.C.M. 1947, are repealed.

-End-

53